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By e-mail (regs.comment@federalreserve.gov) March 14, 2006

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th and Constitution Avenues, N.W.
Washington, D.C. 20551

Re: Docket No. OP-1246

Dear Ms. Johnson:

Comerica Bank is writing to comment on the proposed Interagency Guidance on Nontraditional Mortgage Products. Comerica Bank holds assets amounting to approximately \$55 billion; approximately \$1.4 billion of those assets consist of 1-4 family residential loans secured by first liens, and approximately \$545 million in such loans represent adjustable rate loans. A portion of those adjustable rate mortgages ("ARMs") permit the borrower to pay interest only for a fixed period of time. The bank does not offer negative amortization loans at this time.

Because Comerica Bank offers interest-only ARMs, it would be directly affected by adoption of the proposed Guidance and would offer the following for consideration:

SCOPE OF GUIDANCE

The threshold question that arose when Comerica Bank studied the proposed Guidance was whether it only applies to first mortgage loans or also applies to home equity loans and home equity lines of credit. The Guidance is silent as to its scope. Because the Guidance expresses particular concern about nontraditional mortgage products offered with simultaneous seconds, one could infer that the scope of the Guidance is limited to first lien mortgages. However, we are aware of at least one other major bank that believes that the proposed Guidance covers second-lien mortgages. Whichever is the case, the Board and its fellow regulators would do well to clarify the point to reduce confusion on this point and increase industry consistency.

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SECOND LENDER CONCERNS

We understand and respect the safety and soundness concerns that have caused issuance of the proposed Guidance. If we understand those concerns correctly, they are, to a large extent, concerns about the indirect effect of customer "payment shock" on the safety and soundness of the first mortgagor. However, in discussing the proposed Guidance, we have come to believe that there is another safety and soundness concern to which the regulators need to be alerted and that is the effects nontraditional first mortgage products may have upon lenders subordinate to the holders of the first mortgages. Of course, many banks make home equity loans and provide home equity lines of credit secured by second mortgages on residential real estate. Those subordinated lenders rarely, if ever, are able conveniently to learn anything about the terms and conditions of the first mortgage, such as whether the first is a nontraditional mortgage product. If the risk of "payment shock" creates credit risk to the holder of the nontraditional first mortgage, "payment shock" caused by a nontraditional first mortgage also creates credit risk to the holder of a second mortgage subordinate to a nontraditional first mortgage, and it appears that the second lender may be substantially less able to protect itself against that risk than can the first lender. Second lenders need an efficient way to determine whether the first mortgage loan is a nontraditional product, and simply asking loan applicants is often not very reliable, practical, or quick.

NEED FOR MODEL DISCLOSURE FORMS AND HOTLINE

The proposed Guidance, in expressing concern that consumers might enter into nontraditional mortgage product transactions without fully understanding product terms, suggests that certain disclosures be made to consumers, particularly product descriptions, costs, terms, features, and risks, including that of "payment shock" (maximum monthly payment amount, when structural payment changes will occur, how the payment amount would be calculated), prepayment penalties, and pricing premiums attached to reduced documentation programs.

Without more specificity, different lenders are likely to make disclosures in formats and ways that differ from another, making it potentially more difficult for consumers to comparison shop. Some lenders may also not fully understand how these proposed disclosures interface with disclosures required by Regulation Z.

It would be helpful to both lenders and consumers were the regulators to draft and issue model disclosure forms at such time as the regulators adopt the final Guidance. Presumably such model forms would be consistent with Regulation Z.

It would also be most helpful to lenders if the agencies were to establish an educational telephone hotline on the final Guidance to assist institutions needing compliance advice.

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TIMING OF DISCLOSURES

The proposed Guidance states that “[i]nstitutions should provide consumers with information at a time that will help consumers make product selection and payment decisions”. The proposed Guidance then cites as an example “[i]nstitutions should offer full and fair product descriptions when a consumer is shopping for a mortgage, not just upon the submission of an application or at consummation”. That, of course, contemplates that Nontraditional Mortgage Product disclosures would be made earlier in the process than disclosures currently required by other consumer credit protection laws and that consumers would receive three (3) sets of disclosure: (1) when shopping, (2) on application, and (3) at closing. It is quite conceivable then that there could be fourth and fifth sets of disclosures during the shopping phase if a consumer, after receiving the first disclosure changes what he or she wishes.

It would be helpful to lenders if the agencies would clarify how the shopping disclosure requirement would work in various real world situations. For example, would it apply where a borrower was prequalified and, if so, when would the disclosure have to be given in such a case? Would the disclosure requirement apply to telephone inquiries and, if so, how would that requirement have to be met in such a situation?

TIMELINE

The amounts of time it will take to comply with various aspects of the proposed Guidance will vary with the particular aspect and its complexity. In other words, it will take longer to comply with some parts of the Guidance than with others. Those parts of the Guidance requiring systems changes, such as the requirement for portfolio monitoring, in particular, may have longer compliance horizons. We recognize that a Guidance is not mandatory and thus, in a sense, may not require compliance, but, for those institutions desiring to be responsive to the agencies’ concerns and thus that strive to comply with non-binding Guidances, it would be helpful if the final Guidance took into account that compliance with some aspects might not be immediate despite the good faith of the institution.

Thank you very much for the opportunity to comment on this important proposal. We, of course, would be pleased to answer any questions you might have about our comments.

Best wishes,

Bonnie Cohn
First Vice President
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